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MONTANA LEGISLATIVE HISTORY

Chapter 161 19 81

Bill H 495 S _____ Original bill & history ____C

H. Committee on Business and Industry		S. Committee on Business	
Hearing Date(s) Feb 05	✓C	Hearing Date(s) Mar 13	✓C
Feb 12	✓C	_____	____C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out _____	____C		

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

2ND READING: 2/17 YEAS: 85; NAYS: 0
3RD READING: 2/19 YEAS: 98; NAYS: 0

TRANSMITTED TO SENATE: 2/19
REFERRED TO COMMITTEE ON AGRICULTURE: 2/20
HEARING: 3/9
REPORT: 3/10, BE CONCURRED IN, AS AMENDED
2ND READING: 3/11, BE CONCURRED IN
3RD READING: 3/13, YEAS: 48; NAYS: 0

RETURNED TO HOUSE WITH AMENDMENTS: 3/13
2ND READING: 3/18 YEAS: 85; NAYS: 0
3RD READING: 3/20 YEAS: 93; NAYS: 0

TRANSMITTED TO GOVERNOR: 3/26
ACTION: SIGNED, 3/30
CHAPTER 186

HB 495--BERGENE, HAMMOND, SEIFERT, ET AL--TO EXEMPT FROM THE BANKR... ESTATE ONLY THE PROPERTY EXEMPT FROM EXECUTION OF JUDGMENT... STATE LAW.

INTRODUCED: 1/26
REFERRED TO COMMITTEE ON JUDICIARY: 1/26
ON MOTION, TAKEN FROM COMMITTEE ON JUDICIARY AND REREFERRED... COMMITTEE ON BUSINESS AND INDUSTRY: 1/29
HEARING: 2/9
REPORT: DO PASS AS AMENDED, 2/12
2ND READING: 2/17, YEAS: 81; NAYS: 2
3RD READING: 2/19, YEAS: 99; NAYS: 0

TRANSMITTED TO SENATE: 2/19
REFERRED TO COMMITTEE ON BUSINESS: 2/20
HEARING: 3/13
REPORT: 3/13, BE CONCURRED IN
2ND READING: 3/16, YEAS: 39; NAYS: 9
3RD READING: 3/18, YEAS: 44; NAYS: 4

RETURNED TO HOUSE: 3/18
TRANSMITTED TO GOVERNOR: 3/21
ACTION: SIGNED, 3/26
CHAPTER 161

HB 496--MOORE, SEIFERT, CURTISS, ET AL--TO SUBMIT TO THE QUALIFIED ELECTORS AN AMENDMENT TO THE MONTANA CONSTITUTION TO PROVIDE FOR REPEAL OF ADMINISTRATIVE AGENCY RULES BY THE ADMINISTRATIVE CODE COMMITTEE.

INTRODUCED: 1/26
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 1/26
HEARING: 2/9
REPORT: DO PASS, 2/9
2ND READING: 2/11 YEAS: 47; NAYS: 52
DO NOT PASS MOTION, 2/11 YEAS: 51; NAYS: 48
BILL KILLED ON 2ND READING: 2/11

HB 497--ORBERG, HOLLIDAY, GALT, ET AL--TO APPROPRIATE MONEY FOR THE CONSTRUCTION OF NATIONAL GUARD ARMORIES AT HARLOWTON AND HAVRE.

INTRODUCED: 1/27
REFERRED TO COMMITTEE ON APPROPRIATIONS: 1/27
HEARING 2/1...
BILL DIED IN COMMITTEE

#23

HOUSE BUSINESS AND INDUSTRY COMMITTEE

February 9, 1981

SUMMARIES OF

HOUSE BILL 411 -

Introduced by Reps. Burnett and Brand by request of the Department of Revenue reduces the annual all-beverage license fee for a veterans' organization post to: $250 in a rural area or in a town of less than 2,000 population; $350 in a city of population between 2,000 and 5,000; $500 in a city of population between 5,000 and 10,000; and $650 in a city of population over 10,000. In each instance the fee for the veterans' organization would be $150 less than private licensees.

HOUSE BILL 459 -

Introduced by Rep. Williams and others by request of the office of the governor, is identical to HB 188 previously considered by the committee, and repeals Montana's store license law.

HOUSE BILL 468 -

Introduced by Rep. Thoft and others by request of the Study Committee on Container Deposits, prohibits sale of beverages in metal containers openable by a detachable device. Each day on which a violation occurs would be a separate offense punishable by a fine of up to $500 or by a jail term of up to 6 months or both fine and jail term.

HOUSE BILL 495 -

Introduced by Rep. Bergene and others, removes the exemption from bankruptcy proceeding for any property except necessary household property, property necessary to carry on a trade or profession, property necessary to carry out government functions, the earnings of the debtor for personal services rendered within 45 days preceding, the homestead as provided in state law, life insurance benefits on which the annual premiums are less than $500, and one truck or automobile worth not more than $300 if the debtor is the head of a family or more than 60 years, unless the debts were incurred for the common necessities of life.

HOUSE BILL 495 -

REP. TONI BERGENE, House District #36, Cascade County, chief sponsor, said researching the bankruptcy laws has been an awesome job for her. In 1970 it became clear to Congress that the bankruptcy statutes enacted in 1898 hadn't been brought up to date. After 8 years of studying the Bankruptcy Act of 1898, new legislation changed the substance of the act and rendered it obsolete. This has triggered banks and other consumer lending agencies to have to tighten up on their lending policies. The Reform act of 1978 allowed state legislation to override the federal action but action of the Legislature sets forth a less generous schedule. Often husband and wife file a joint bankruptcy, and each spouse can take each of one schedule - one the federal and one the state, or parts of each.

JOHN ALKE, Montana Bankers Association, said they are now operating under a new federal bankruptcy code. The intent of the code was to deprive creditors of their rightsand the effect of the code has done that. Valuation has caused trouble becuase it is very difficult to determine the value that a creditor puts on his property. If the creditor feels it is not warranted, he is put to an enormous task to prove his valuation.

The problem with the bankruptcy code is not simply limited to exemption. Most facets can be developed by the federal code. The federal code does give the one option that either the state or federal exemptions may be used, or both exemption schedules can be. Certain property is exempted from execution. Under federal law Homestead exemption is allowed for $7,500. Under state $20,000 is allowed. Under a joint petition for bankruptcy, a wife could take the state schedule and thehusband could take the federal. If a couple had a home, they could take the state schedule and exempt $20,000, and they could have $7,500 cash in the bank. It is very difficult for people in the credit business to lend money that the creditor can declare bankruptcy and keep $7,500 in cold, hard cash. The federal bankruptcy code permits diversion. Diversion means that the day before he files, if he possesses property which is exempt property, he can dispose of the non-exempt property and obtain exempt property. The $7,500 exemption is the most onerous. You could exchange the non-exempt property for cash put the cash in the bank and claim the cash as an exemption.

Another difficult provision permits a debtor to abandon or declare abandoned, a creditor's claim. If he owned a car and wanted to borrow $3,000 and he could claim that car is a tool of his trade, he could file bankruptcy and even though that car is securety for a loan, he can take and keep the car and be absolved - the creditor is left holding the bag. The tools of the trade are very difficult to prove. What happens if a man's trade changes between purchase and filing? He can buy a car - you can think you have a security interest. He could change his trade and keep the car anyway. You either overexempt the one to protect the truly distraught debtor.

Utilizing the election in the federal law for this state to choose only the state schedule is necessary or it will not prevent abuses. The person in really hard times will be protected.

GEORGE FLEMING, Cascade County Credit Association, Great Falls, Montana is divided into two districts. Figures deal with the east side of the state. It is a tremendously difficult problem. Bankruptcy law is lengthy, difficult to read, and hard to understand. Need to support and need this bill in the State of Montana. See his testimony, EXHIBIT B.

JOHN HOUGHTON, Cascade County Credit Association, Great Falls, supports HB 495. See his testimony attached, EXHIBIT C.

CURTIS B. HANSEN, Executive Vice President of Montana Retail Association, supports HB 495. The federal exemption makes it very easy to file for bankruptcy. We need to put bankruptcy back into its proper perspective. See his testimony, EXHIBIT D.

JEFFRY M. KIRKLAND, Montana Credit Unions League, Director of Governmental Relations, Helena, supports HB 495. He would merely stipulate those filing for bankruptcy would have to take state exemptions rather than both. The new federal bankruptcy code made sweeping changes. See his testimony, EXHIBIT E.

R. L. REIQUAM, Vice President of the First National Bank in Miles City, and currently serving as President, thinks HB 495 will be a benefit to the lending industry and to the consumer. Bankruptcy hurts all businesses. There were 380,000 bankruptcies in 1980, Montana had more than its share. There was 72% in Montana - in eastern Montana it far exceeded that. Eight had a loss of $10,000, and this loss would have been entirely eliminated under previous Legislatures because loans were made prior to the law. The bankrupts were able to escape without any loss. These 8 were more than all the others in the preceding years. See copy of clipping, EXHIBIT F.

Leniency of the laws is indicated by advertising for clients. Bankruptcy makes credit far more difficult for the conscientious debtor who fully thinks he will repay, especially on an unsecured basis. It is more difficult to obtain second real estate mortgages. Claims and all securety can be wiped out under the new laws.

Those living and lending in eastern Montana have seen an increase in the number of bankruptcies. The lender has to travel to Billings - the 8 required no less than 300 miles of travel, 3 hours to get there and 3 hours back was the full loss of a day's time for the banker and attorney, so the travel cost is no small cost for this. Just a portion of the problems have been described. Bankrupts take all kinds of means. In most cases, they run their credit cards up to the maximum allowed because it is excluded. Charge accounts all are overrun so others than the prime lender are hurt. The true consumer should have a means to pay back his debts, and this would benefit all of Montana.

OPPONENTS: None

QUESTIONS -

Rep. Andreason said we are in effect substituting the option that an individual would have to choose the federal or state exemptions. Mr. Alke said yes. There are several sorts of security exempt under the anti-diversion statutes. Under the state exemptions, if a person suspected he was going to go bankrupt, he could sell everything and buy a race horse

worth $250,000 which could be exempted. You are entitled to one horse, or cow, and six chickens. It is a large technical loophole.

Rep. Ardreason asked if under the homestead exemption other than the head of a household could be exempt if there were dependents. A car not worth over $300 is exempt. Rep. Jensen asked if there is a value set on a homestead. $20,000 is interpreted as equity. A $75,000 home with a $55,000 loan would be entirely exempt.

Rep. Fabrega said the homestead exemption only applies as head of a household, and you have to have dependents - do you have to be married and have dependent? Mr. Alke thought the bill should expand that definitio and without reviewing the specific language, under the current law you wou have to be married and dependents would have to be your wife and children.

Rep. Ellison - what would be the difference between the state and federal exemptions providing they didn't have the choice of one choosing one and one choosing the other? Mr. Alke said you could not come up with a dollar comparison figure. The value under either exemption scheme would depend on what type of property you had. Each item in a household would be exempt to the value of $200 under the federal schedule, and it is all exemp under the state schedule. A wife could take the federal exemption - the husband could take the state schedule. No dollar value can be stated.

Rep. Pavlovich asked what if a divorce or a widow with children at hom Mr. Alke said he would have to examine particular language relating to that Rep. Ellerd - on a personal financial statement, this could be accepted as ing on a personal financial statement? Mr. Alke said the equity in the home could be - it would make your bonding easier.

Rep. Wallin said they could go and buy something the day before they intended to file bankruptcy. Is there any attempt in this law that says this is out and out fraud. Mr. Alke said there is no good faith - there is the $7,500 cash provision regardless of your schemes or motives. Rep. Walli so if you convert non-exempt property to cash, that is your right under federal law. There is no good faith requirement.

Rep. Fabrega - you could go and borrow $7,500 and file bankruptcy and keep that $7,500 and put it in your bank and file bankruptcy. As to a secon mortgage on a car - if you had a car with substantial value, you could secur a non-purchase loan, take that money, and file it as a trade car. Mr. Alke said there is no similar cash provision in the state schedule.

Rep. Kitselman suggested they could take some things to the pawn shop. Mr. Alke said you could keep the money and buy something else with the money from the pawned material. When this act was originally introduced in Congres they did not want to give the states the provision of bankruptcy.

Rep. O'Hara asked if there are any other major differences between the state and federal schedules other than the cash. Mr. Alke said you are entitled to a $1,200 car with the federal schedule, and $300 equity under the state schedule. If they have more than $20,000 equity, would they have to sell off their house. Mr. Alke said the bankruptcy code is a new act. If worth more than $20,000, it appears that the whole property is not exempt. If you had a greater equity, the surplus would be subject to bankruptcy collections. You would have the protection of the equity value to back it.

Mr. Fleming said you can call any financial company or bank - they borrow one day and file bankruptcy and get away with it. Premeditated fraud.

Rep. Robbins asked if there is anything in HB 495 that precludes students from filing bankruptcy? Mr. Alke said he didn't know. In addition to the provisions provided by the federal, they are exempt provided they are exempt by any other law. Congress was attempting to allow student loans to be exempt. Mr. Fleming advised a judge back east made them pay back their school loans.

Rep. Wallin - if you were to write this law, would you try to adjust this fraud problem? What would you say in here to adjust this? Mr. Fleming said 522 D portion of the federal law says specifically that the state can enact a law. Don't know whether we can make it any stricter or not. Mr. Alke said bankruptcy is purely a subject of the federal law and is not within the reach of the state. We are powerless to reach any of the other abuses that are in the federal realm.

Rep. Fabrega - would you consider giving only one option - say an individual can only take one exemption? Another problem is when they file as a couple. Mr. Alke said the federal law specifies the election and the state can only guess its exemption scheme, and if the state did not pass a law, the federal law would be the controlling law. The controlling federal law states that the election made by one spouse cannot be reached by state law.

Rep. Bergene closed saying lending agencies do protect distraught debtors through present laws. She will see that the committee each gets a copy of the federal and state schedules.

HOUSE BILL 459 -

REP. MELVIN WILLIAMS, House District #80, Yellowstone County, chief sponsor introduced HB 459 at the Request of the office of the Governor. This bill would repeal Montana's store license law establishing taxes as of January 1, 1982. The state would lose about $350,000 in general fund revenue. There is no regulation associated with this tax. Chain store licenses will raise $300,000 in each year of the biennium. House Bill 188 already does the same thing - both are designed to do the same thing. HB 459 was requested by the Governor to fit into his tax reform.

ELLEN FEAVER, Director of the Department of Revenue, explained there is no apparent purpose for this revenue measure. It costs about $10,000 a year to print and mail the forms. There are no apparent penalities - they don't ever shut a business down because of lack of this license.

CURT HANSEN, Executive Vice President of the Montana Retail Association, supports HB 459. Granted, $10,000 should be considered, but the amount of time it takes to complete a store's form and return it, for the amount of tax revenue it provides, is quite a problem and creates a lot of trouble. Hopes for a Do Pass.

VISITORS' REGISTER

HOUSE B&O COMMITTEE

BILL HB 495 Date 2/9

SPONSOR Bergene

NAME	RESIDENCE	REPRESENTING	SUPPORT	OP
[illegible]	Great Falls	Cascade County Republican Women	X	
[illegible]	Great Falls	Cascade County Republican Women		
[illegible]	[illegible]	[illegible]	L	
[illegible]	Great Falls	Cascade County Republican Women	L	
[illegible]	Helena	MT. Retail Assn	L	
[illegible]	Kevin	MT Petroleum	L	
[illegible]	Great Falls	Great Falls Assn	L	
[illegible]	Billings	West Equipment	L	
[illegible]				
Steve Fleming	Gt Falls	Cascade County Republicans	L	
Don Houghton	Gt Falls		L	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Exhibit B 495

		1. STATE	2. FEDERAL
1.	Homestead	$20,000	$7,500
2.	Car[1]	$ 300	$1,200
3.	Necessary Furniture	No Limit	$ 200 (Per Item)[2]
4.	Life Insurance	No Limit[3]	Unmatured No Limit Cash Value $4,000
5.	45 Days Earnings[1]	No Limit	See 12 Below
6.	Clothes	No Limit	See 3 Above
7.	1 Horse, 2 Cows, 4 Hogs, 50 Fowl, 3 Months Feed	See 3 Above	See 3 Above
8.	Clock & Family Pictures		See 3 Above
9.	One Gun	No Limit	----------
10.	Tools of Trade	No Limit	$ 750
11.	Jewelry		$ 500
12.	Omnibus		$400 to $7,900[4]
13.	Professionally Prescribed Health Aids		No Limit
14.	Social Security, Welfare, Disability Benefits, Pension Plans, Alimony		No Limit[5]
15.	Crime Victim Reparations, Wrongful Death Awards, Life Insurance Proceeds, Personal Injury Awards		Reasonably Necessary For Support

FOOTNOTES:

1. One-half of these exemptions not exempt for debts incurred for "necessities of life".

2. This exemption applies to household furnishings, goods, clothes, appliances, books, animals, crops, or musical instruments primarily for personal use.

3. This exemption applicable only if annual premiums less than $500 per year.

4. The unused portion of the federal homestead exemption may be added to the base of $400.00.

5. Alimony and pension plans are restricted. Both are limited to the amount reasonably necessary for support, and the type of pension plan qualifying is strictly limited by statute. Reference should be made to 11 USC 522(d)(10)(E) for all pension questions.

III. ANTI-DIVERSION PROVISIONS:

Almost every form of state or federal benefit program has some sort of anti-diversion provision. These provisions are intended to prohibit creditors from being the beneficiaries of governmental benefit programs, instead of the intended beneficiary. These provisions generally prohibit attachment or execution on the benefits.

It should be noted that a substantial body of case law has arisen around the concept that such anti-diversion statutes apply not only to the benefit checks per se, but money or property "traceable" to such benefits. To a degree, the Bankruptcy Code probably incorporates this tracing concept. Additionally, the Bankruptcy Code specifically applies the tracing concept to crime reparation awards, personal injury awards, and wrongful death awards.

You, the lender should start with the assumption that any given governmental benefit program probably has an anti-diversion provision, but check the specific program to make sure.

Exhibit B

A

Associated Credit Bureaus, Inc.

December 11, 1980

ACB MEMBERS

As we are all aware, consumer bankruptcies are mushrooming at a staggering rate. Some areas of the country are reporting increases of more than 100% over last year in petitions filed. Nationally, bankruptcy petitions are 70% greater than the record high filed in 1975. — 19 Million 1/1/80 Thru 9/80. Eastern District

Despite the recession, we feel that the preeminent causes of this increase are the lenient provisions of the new Bankruptcy Code. These provisions, along with the trend in attorney advertising, act as inducements to consumers to file for bankruptcy without considering either the alternatives or the consequences.

While we must wait for Congress to enact substantial revisions in the Bankruptcy Code, we can immediately undertake a public relations program to dissuade consumers away from the lure of bankruptcy. To be successful, it will be necessary to enlist the services of everyone in your credit-granting community.

The Public Affairs/Public Relations Department has compiled the enclosed bankruptcy "package." In the package, we have included a list of some of the steps to take in organizing a bankruptcy educational seminar. Such seminars for credit industry people have proven to be helpful in understanding the law and creditors' rights. We have also included a camera-ready newspaper advertisement that describes some of bankruptcy's consequences. The ad was initially conceived by the Credit Bureau of Galesburg, Illinois, and we have been given permission to reproduce it.

Finally, the enclosed pamphlet, entitled "Bankruptcy...some things to consider," was written for consumers contemplating their financial dilemmnas. It can, and should, be made available at no cost to consumers at your credit bureaus and used as envelope stuffers in your mailings. As a public relations service, you might consider offering these pamphlets to your subscribers. They might put them to good use on their credit counters.

The bankruptcy problem may be with us for some time. It, therefore, is in the interests of the credit-granting community to work together and counter this unhealthy development.

Best personal regards.

Sincerely,

John L. Spafford

John L. Spafford
President

Enclosure

definite improvement and on the whole is a good law, a law which was long overdue and needed.

For purposes of this article, I will limit the discussion to the major substantive changes that relate to consumer bankruptcies and Chapter XIII cases — the so-called straight bankruptcy and wage-earner plans. Also, a brief word about the changes affecting court structure and its operation.

Exemptions

For most bankrupts the new law will mean more liberal provisions. The Code represents the minimum exemptions available; however the bankrupt may elect to use the applicable state exemptions. The state legislatures, however, may pass a law that the federal law is not to be used. This, of course, defeats the goal of attaining uniform exemptions, but it was part of a compromise arrived at in the last few days before enactment in order to assure "states' rights."

In capsule form the Code exemptions are:

- *Real estate* — $7,500
- *Motor vehicle* — $1,200
- *Household goods, wearing apparel, etc. . .* that are held primarily for personal, family or household use — $200
- *Jewelry* — (family use, etc.) — $500
- *Tools of trade* — $750
- *Unmatured life insurance owned by debtor*
- *Professionally prescribed health aids for debtor or dependent*
- *Social Security, unemployment compensation, public assistance, veterans disability, or sick benefits*
- *Alimony, support, or separate maintenance*
- *Stock bonus, pension, or profit sharing benefits*
- *Crime victim payments*
- *Wrongful death payments*
- *Negligence recovery up to $7,500*

Objections to discharge and non-dischargeability

No substantial changes were made in this area, except as to the effect caused by the changes in the bankrupt's right to redeem certain personal property and his right to reaffirm a debt.

However, a new provision provides that a consumer debtor shall be awarded costs and attorney fees if he successfully defends an action objecting to the discharge of a debt because of a false financial statement.

Also, educational loans are non-dischargeable unless the loan became due five years before the date of filing or the Court determines that such non-dischargeability would impose an undue hardship on the debtor or his dependents.

There appears to be a legislative oversight with regard to educational loans, in that the portion of the Higher Education Act which previously provided for the non-dischargeability of such debts was repealed by the new Bankruptcy Code and the Code will not be effective until October. Thus, it may be the case that such loans are dischargeable until the effective date of the Code. However, early Congressional action is expected to correct this hiatus.

Considerable litigation has been prevalent as to what is "alimony and support", which is non-dischargeable, and the Code attempts to clarify this confusion by defining what needs to be included in a separation agreement to make it non-dischargeable.

Also, the Code now clarifies considerable conflicting cases as to the non-dischargeability of debts that were listed in a previous bankruptcy, but later reaffirmed and thereafter scheduled in a subsequent petition. Such debts will not be non-dischargeable if they were or could have been scheduled in a prior bankruptcy or were reaffirmed by the bankrupt or denied a discharge as to such debt.

Bankrupt's right to redeem

The individual debtor has the right to redeem

Change in reporting bankruptcies in consumer credit reports

The new Bankruptcy Act Contains a section which amends the Fair Credit Reporting Act, Section 605 (Obsolescence), to restrict the reporting of all bankruptcies to 10 years instead of 14 years. The effective date of this provision is October 1, 1979.

When this amendment was first proposed, ACB conducted an informal poll of leading credit grantors from all types of businesses to assess its impact on their decision-making process. The overwhelming majority said the change would have little or no effect on their ability to make prudent credit decisions.

Exhibit C

Associated Credit Bureaus, Inc.
16211 Park 10 Place • PO Box 218300
Houston, Texas 77218 • (713) 492-8155

Key Points of Conversation

1. We are sympathetic with those people who have studied all the options to bankruptcy but who must choose it as the only final way out of an intolerable situation. A modern bankruptcy law should exist for those people, but it should not be so lenient that virtually anyone can qualify for the relief of justifiable debts.

2. A Bankruptcy Code exists at this time that does not protect the rights of creditors but does enable debtors to escape just payments through very little sacrifice.

3. Certain bankruptcy attorneys advertise through newspapers and promote the false notion that bankruptcy is devoid of any long-term consequences. The advertisements that they place are designed so that the debtor will prematurely elect bankruptcy as the only solution to his financial problems. Once the debtor has been induced to seek legal advice, the attorney involved, in many cases, will not counsel the debtor on bankruptcy alternatives.

Skip

4. Bankruptcy is the most devastating indication that an individual cannot handle his or her credit obligations in a responsible manner. A bankruptcy notation will be listed on a consumer's credit history for seven years, if he files a Chapter 13 plan, or for ten years, if he files for straight bankruptcy. During that time, the debtor will be unable to obtain credit from most credit grantors.

5. There are alternatives to bankruptcy. The first thing that a debtor should do is contact his creditors. They will try to work out a payment schedule that fits within his income. Credit counseling is another alternative as it allows the debtor to be schooled in the use of credit and in the best ways to readjust his spending priorities. Credit counseling services are often non-profit organizations run by community service groups.

6. If the reckless use of bankruptcy is encouraged, it is axiomatic that the costs for goods and services will increase.

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Exhibit D
Hansen

Executive Office
P.O. Box 440
34 West Sixth
Helena, MT 59624
Phone (406) 442-3388

BEFORE THE HOUSE BUSINESS AND INDUSTRY COMMITTEE:

BANKRUPTCY REFORM

HOUSE BILL 495

MY NAME IS CURTIS B. HANSEN. I AM THE EXECUTIVE VICE PRESIDENT OF THE MONTANA RETAIL ASSOCIATION. I APPEAR TODAY IN SUPPORT OF HOUSE BILL 495.

THE BANKRUPTCY REFORM ACT OF 1978 FORMALLY REPEALED THE 1938 BANKRUPTCY ACT IN ITS ENTIRETY AND REPLACED IT WITH A AN ENTIRE NEW BANKRUPTCY CODE WHICH BECAME EFFECTIVE OCTOBER 1, 1979. CONGRESS ADDED MANY NEW SUBSTANTIVE PROVISIONS TO THE 1978 CODE WHICH HAVE THE EFFECT OF DECREASING SUBSTANTIALLY THE AMOUNT OF ASSETS AVAILABLE TO A CREDITOR IN THE TYPICAL CONSUMER BANKRUPTCY CASE, THUS INCREASING THE NUMBER OF NO ASSET CASES.

NO INCREASE IN THE RATE OF CONSUMER BANKRUPTCY IN HISTORY CAN COMPARE WITH THE EXPERIENCE UNDER THE NEW BANKRUPTCY CODE. DURING THE FIRST 12 MONTHS SINCE THE BANKRUPTCY REFORM ACT WENT INTO EFFECT THERE HAVE BEEN APPROXIMATELY 400,000 BANKRUPTCIES OR A 100 PERCENT INCREASE. ALTHOUGH CURRENT ECONOMIC CONDITIONS HAVE PLAYED A ROLE IN THIS INCREASE, IT MUST BE ATTRIBUTED LARGELY TO THE PROVISIONS OF THE NEW BANKRUPTCY CODE ITSELF.

ALTHOUGH THE 1978 CODE MADE A NUMBER OF CHANGES IN BASIC BANKRUPTCY LAW AND PROCEDURE, THE ONE PROVISION MOST RESPONSIBLE FOR THE ESCALATION IN CONSUMER BANKRUPTCIES IS THE SECTION WHICH GIVES THE DEBTOR A RIGHT TO CHOOSE BETWEEN STATE EXEMPTIONS AND A NEWLY CREATED LIST OF FEDERAL EXEMPTIONS. THE PROVISION IS AN IMPORTANT CONTRIBUTOR TO THE RISE IN BANKRUPTCY FILINGS, BECAUSE THE NEW FEDERAL EXEMPTIONS ARE FAR MORE GENEROUS TO CONSUMERS THAN ARE PROPERTY EXEMPTIONS TYPICALLY AVAILABLE UNDER STATE LAW. IT IS ALSO IMPORTANT IN THE CONTEXT OF STATE ACTION BECAUSE IT PERMITS A STATE TO BAR THE AVAILABILITY OF FEDERAL EXEMPTIONS BY ENACTING LEGISLATION SPECIFICALLY PROHIBITING A DEBTOR WITHIN THAT STATE FROM CLAIMING THE FEDERAL EXEMPTIONS.

THE 1978 BANKRUPTCY CODE PROVISIONS HAVE BECOME AN ENTICEMENT FOR CONSUMERS TO SEEK BANKRUPTCY AS AN EASY ALTERNATIVE TO FACING FINANCIAL PROBLEMS. THERE ARE ALSO ABUSES IN LAWYER ADVERTISING. AS A RESULT, RETAILERS ARE SUFFERING INCREASED CREDIT LOSSES.

ENACTMENT OF LEGISLATION (SUCH AS HOUSE BILL 495) WILL STILL ALLOW EASY AXCESS TO BANKRUPTCY WHEN NECESSARY, BUT WILL HELP TO MAKE BANKRUPTCY A LAST RESORT RATHER THAN A FIRST CHOICE, FOR THOSE THAT ARE FACING FINANCIAL DIFFICULTIES. AS IT NOW STANDS, THERE IS NO NEED FOR ANY DETERMINATION THAT THERE ARE OTHER ALTERNATIVES BECAUSE LIBERALIZED EXEMPTIONS HAVE MADE BANKRUPTCY TO ATTRACTIVE TO TRY TO WORK OUT ANY LONG RANGE PLANS TO GET OUT OF DEBT OR IN CONTROL OF ANY

Exhibit E

House Bill 495

Testimony of Jeffry M. Kirkland

Director of Governmental Relations

Montana Credit Unions League

Before the House Business & Industry Committee

on Monday, 9 February, 1981

Mr. Chairman and members of the Committee, for the record I am Jeff Kirkland, Director of Governmental and Community Relations for the Montana Credit Unions League. Our League is a trade association representing 133 of 136 credit unions in Montana, and it is on their behalf that we stand in support of House Bill 495.

House Bill 495 would merely stipulate that a debtor in a bankruptcy proceeding utilize the exemptions provided within state law rather than the exemptions provided within the federal Bankruptcy Reform Act of 1978. In other words, under House Bill 495 a debtor could only shield from his creditors property listed in Title 25, Chapter 13, Part 6, M.C.A. as had always been the case until passage of the federal Bankruptcy Code in 1978.

The new Code made numerous changes to bankruptcy law, and one of the most sweeping of changes was the inclusion of federal exemptions that a debtor might choose instead of state exemptions, depending on which would be most favorable for him. Under previous bankruptcy law, the establishment of such exemptions was exclusively within the province of the state legislatures.

The federal exemptions are generally much more favorable than

MOST OF THE STATE EXEMPTIONS, WITH THE EXCEPTION OF THE HOMESTEAD EXEMPTION, WHICH IS MORE FAVORABLE THAN THE FEDERAL EXEMPTION. AND CURRENTLY, THE DEBTOR HAS HIS CHOICE OF EITHER THE FEDERAL OR THE STATE EXEMPTIONS, WHICHEVER HAPPENS TO BE MOST FAVORABLE TO HIM.

IN ADDITION, SHOULD A HUSBAND AND WIFE FILE JOINTLY FOR BANKRUPTCY, ONE CAN CHOOSE THE FEDERAL EXEMPTIONS AND THE OTHER CAN CHOOSE THE STATE EXEMPTIONS TO ENSURE THE MOST FAVORABLE CIRCUMSTANCES. UTILIZING THE MORE FAVORABLE FEDERAL EXEMPTIONS OR, IF FILING JOINTLY, A FAVORABLE COMBINATION OF FEDERAL AND STATE EXEMPTIONS, SOME PRE-BANKRUPTCY PLANNING BY THE DEBTOR'S ATTORNEY CAN OFTEN ELIMINATE MOST, IF NOT ALL, OF THE DEBTOR'S ASSETS FROM THE BANKRUPTCY ESTATE, THEREBY LEAVING LITTLE OR NOTHING FOR DISTRIBUTION TO THE CREDITORS.

BANKRUPTCY HAS TRADITIONALLY BEEN A METHOD FOR OBTAINING A "FRESH START" FOR THOSE WHO HAVE BECOME OVERWHELMED BY DEBT, EITHER FROM POOR ECONOMIC JUDGMENT OR FROM SOME CATASTROPHIC OCCURRENCE SUCH AS ILLNESS, LOSS OF EMPLOYMENT, OR AN ACCIDENT. AS LENDERS, EVEN THOUGH WE SUSTAIN LOSSES FROM BANKRUPTCIES, WE AGREE WITH THE "FRESH START" CONCEPT OF BANKRUPTCY.

HOWEVER, WE ALSO BELIEVE THAT BANKRUPTCY SHOULD RESULT IN EQUITABLE TREATMENT FOR <u>BOTH</u> THE DEBTOR AND HIS CREDITORS. THAT IS, THE DEBTOR SHOULD BE ABSOLVED FROM HIS UNMANAGEABLE DEBT, AND THE CREDITORS SHOULD RECEIVE AS MUCH OF WHAT THEY ARE CONTRACTUALLY ENTITLED TO RECEIVE AS POSSIBLE.

AS LENDERS, WE SEEK AN ELEMENT OF FAIRNESS IN A BANKRUPTCY PROCEEDING, AND THE ABILITY TO PICK AND CHOOSE THE EXEMPTIONS THAT WOULD ALLOW THE DEBTOR TO SHIELD THE MOST PROPERTY FROM HIS CREDITORS DOES NOT PROVIDE COMPARABLE FAIRNESS TO CREDITORS. THE EXEMPTIONS

PROVIDED FOR IN BANKRUPTCY SHOULD PROVIDE THE DEBTOR A REASONABLE BASIS FOR STARTING OVER. THEY SHOULD NOT, HOWEVER, SERVE AS A DEVICE TO BETTER HIS ECONOMIC POSITION AT THE EXPENSE OF HIS CREDITORS.

AS NON-PROFIT COOPERATIVE LENDING INSTITUTIONS OWNED AND OPERATED BY OUR MEMBERS, CREDIT UNIONS HAVE ALWAYS BEEN DEMONSTRABLY CONCERNED WITH THE ECONOMIC WELL-BEING OF OUR CONSUMER-MEMBERS. IN FACT, FINANCIAL COUNSELING FOR MEMBERS WHO ARE IN ECONOMIC DIFFICULTY IS ONE OF OUR MOST IMPORTANT SERVICES.

HOWEVER, EVERY TIME A CREDIT UNION SUSTAINS A LOSS THROUGH BANKRUPTCY, IT IS NOT A SELECT GROUP OF STOCKHOLDERS THAT GETS HURT--IT IS EACH AND EVERY ONE OF THE CREDIT UNION'S MEMBER-OWNERS. WE ARE CONCERNED WITH THE ECONOMIC WELL-BEING OF OUR CONSUMER-MEMBERS, BUT WE ARE JUST AS CONCERNED WITH THE EQUITABLE TREATMENT OF OUR MEMBER-OWNERS. WE DON'T BELIEVE THAT THE ABILITY TO PICK AND CHOOSE THE MOST FAVORABLE LIST OF EXEMPTIONS TO SHIELD THE MOST PROPERTY PROVIDES THAT EQUITABLE TREATMENT.

NOR, IT SEEMS, DO 16 OTHER STATE LEGISLATURES (ALABAMA, ARIZONA, FLORIDA, GEORGIA, ILLINOIS, INDIANA, KANSAS, KENTUCKY, LOUISIANA, NEBRASKA, OHIO, OKLAHOMA, SOUTH DAKOTA, TENNESSEE, VIRGINIA, AND WYOMING) THAT HAVE ALREADY ENACTED SIMILAR LEGISLATION.

IN CONCLUSION, WE URGE THAT THIS COMMITTEE RECOMMEND THAT HOUSE BILL 495 DO PASS.

Exhibit F 495

30 ft. to Bldg.

THE WALL STREET JOURNAL, Monday, June 30, 1980

Your Money Matters

Debtors File for Bankruptcy at a Record Rate, Spurred by New Code, Recession, Tight Credit

By William G. Flanagan
Staff Reporter of The Wall Street Journal

Have you ever heard an advertisement for going bankrupt? Well, in New York City just dial (212) 697-4004. You'll hear, in a smooth, radio-quality voice, the wisdom of going into Chapter 13 as a means of getting all those nasty creditors off your back.

A lot of debt-ridden consumers are getting the message about going under, whether they dial the office of bankruptcy lawyer A. Gerald Kagan or not. This is the biggest year ever for personal bankruptcies. In April alone, the latest month for which national figures are available, 39,494 people filed for bankruptcy, compared with 25,897 a year earlier. The 12 months ending today will see a record total of 355,000 filings, according to a projection by the Bankruptcy Division, Administrative Office of U.S. Courts. The highest number previously recorded was during the last recession in 1975, when there were 254,484 filings.

The reasons so many people are going under are threefold, say the experts:

—A new federal bankruptcy code that took effect in October 1979 makes the terms and conditions for going bust a lot more palatable. The net effect of the new code is that many people facing bankruptcy can keep most, if not all, of what they own and leave most creditors holding the bag.

—The recession and high unemployment in some parts of the country have taken their toll. For families where the principal breadwinner—or even the working spouse whose income was once largely a luxury—is laid off, bankruptcy is sometimes a tempting way out of debt. In April, for example,

Buying & Borrowing

Here are some recent figures on financial trends affecting consumers and individual investors.

—DOW JONES INDUSTRIALS—
Closing: 881.83. Year earlier: 841.98.

—MOODY'S CORPORATE YIELDS—
Average for Aa-rated bonds:
June 26: 11.19%. Year earlier: 9.55%

—FEDERAL HOME LOAN BANK—
Average effective conventional mortgage rate on new homes.
May: 13.67%. Year earlier: 10.47%
Average price on new homes:
$88,800. Year earlier: $72,300.

ruptcy—Chapter 7 and Chapter 13, under the federal code. The latter is not really formal bankruptcy, but a wage-earner plan. The essential difference is that in the first instance, you throw up your hands and surrender your assets for your creditors to squabble over. In the second, you work out a repayment schedule—usually partial—over a period of three years or so. In most cases the second alternative is preferable if you have substantial assets such as a home.

They can't take everything away from you if you go under. In fact, there is quite a bit of property that is exempt.

Under the new federal code, creditors cannot touch $7,500 equity in your home ($15,000 if you file jointly for bankruptcy with your spouse); $1,200 value of your car; all household furnishings, goods, clothes, books, etc., not to exceed $200 per item; $500 of personal jewelry; $400 in any property; $750 of tools; and all health aids [illegible]

all, it makes sense to hire a lawyer, who may charge $300 to $1,500 or more, depending upon services rendered. Beware: There are plenty of pitfalls for the unwary. If you transfer assets to your children or family, for example, you may be acting illegally if such actions are deemed to have been made in anticipation of bankruptcy. On the other hand, other transfers of assets—such as buying insurance with your savings—are perfectly aboveboard.

Not only the destitute go bust, of course. One New York doctor with an $80,000 annual income went into Chapter 13 to avoid the hounding of creditors, then arranged repayment of his debts over a three-year period. But even with high-income debtors, total repayment of debts under Chapter 13 is rare. "Ten cents on the dollar is typical," says one creditor.

The act of filing and declaring bankruptcy is quite simple. You file your petition, schedules of assets and earnings, and statement of affairs in the federal court district in which you have resided for six months. (A lawyer can help you with this, but many debtors can manage it themselves. The forms themselves are available from legal stationers.)

As soon as you submit your petition of bankruptcy, you are off the hook with your creditors. The court will notify them that you have filed, and they can no longer harass you. Within 10 to 30 days of filing, they will have an opportunity to question you at what is known as a meeting of creditors. But, as a matter of practice, few creditors ever appear.

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—The recession and high unemployment in some parts of the country have taken their toll. For families where the principal breadwinner—or even the working spouse whose income was once largely a luxury—is laid off, bankruptcy is sometimes a tempting way out of debt. In April, for example, aside from California, the states reporting the highest numbers of filings were Ohio (2,156), Illinois (2,204), and Michigan (1,260). These are the industrial states hit hardest by layoffs.

California is, as in many other things, a special case; it had 3,677 filings. Its terms for going bust are the most attractive in the nation. In most states, an individual filing for bankruptcy can choose to accept the ground rules set up by the state or those in the new federal code. (Those rules in California are so liberal that some people even move into the state before going bust.)

—The Federal Reserve's tightening of consumer credit has also had an effect. Consumers with no cash reserves who are suddenly hit with an unexpected financial crisis or elimination of anticipated income for a period can't borrow to get out of the hole as easily as they once could. So-called consolidation loans now are more difficult to obtain from finance companies. Lines of credit from banks have evaporated. Personal loans have been cut back, and other traditional sources of easy credit have been shut off.

The Creditors' View

The jump in the number of bankruptcies has naturally alarmed the nation's largest creditors. "Under the new code, there are *more* benefits to the debtor, at the creditor's expense," notes William R. Moroney, a spokesman for the National Consumer Finance Association.

Already the dollar losses are showing up. One large bank reports that its bankruptcy losses doubled in the first four months of this year from a year earlier. And the consumer-financial group recently surveyed a number of large finance companies that reported dollar losses from bankruptcies up an average of 50% from the first quarter of 1979. ("Skip-outs"—people who simply move without any notice—still account for greater losses than bankruptcies, however, says Mr. Moroney.)

Not surprisingly, the lending industry thinks many consumers are ill-advised in seeking bankruptcy as a means of getting out of debt. "The fact that there is legal advertising now, and bankruptcy being one of

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Under the new federal code, creditors cannot touch $7,500 equity in your home ($15,000 if you file jointly for bankruptcy with your spouse); $1,200 value of your car; all household furnishings, goods, clothes, books, etc., not to exceed $200 per item; $500 of personal jewelry; $400 in any property; $750 of tools; and all health aids for debtor and dependents.

Other federal exemptions include unmatured life insurance; Social Security, welfare, unemployment or veterans' disability payments; alimony, support and maintenance; and pension or profit-sharing benefits.

Some states have more liberal exemptions that you can choose. In California, for example, the head of household can keep up to $30,000 of equity in his home.

It isn't necessary to hire a lawyer to go into Chapter 7 or Chapter 13, although a $50 filing fee must be paid to the federal court where you file. But if you have any assets at

for example, you may be acting illegally if such actions are deemed to have been made in anticipation of bankruptcy. On the other hand, other transfers of assets—such as buying insurance with your savings—are perfectly aboveboard.

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If the filing is complex, a judge may appoint a trustee to conserve the assets, check for other assets, and make equitable distribution to creditors. The creditors then have some time to react to a debtor's receiving a discharge of debts. But, after the final discharge, the creditors cannot do a thing.

If you choose Chapter 13 and find the repayment burden too harsh, you can still file for Chapter 7 bankruptcy. In fact, many debtors in Chapter 13 eventually declare formal bankruptcy later.

Two sources for further information: "How to Get Out of Debt," by Ted Nicholas (Enterprise Publishing, 725 Market St., Wilmington, Del., 19801 $4.95), and "The Consumer Guide to Bankruptcy & Chapter 13," (American Bankruptcy Council, 2525 Van Ness Ave., San Francisco, 94109 $5).

in the cost of the project.

Rep. Manning remarked this law doesn't do away with the right of the government to require a bond, it is permitting other means.

Rep. Wallin thought it would be an extra unnecessary cost to provide a surety bond. On a big job, the cost could be $60-$70,000. Mr. Huss said there was a question of the utilization of certificates of deposit so that the money would not be lying around idle, so anybody that has to put in a bid bond or the security, in order that that person may be earning some interest on his money, certificates of deposit is the one they are concerned about.

Rep. Lory closed thinking it would be in trouble in the bidding process of which Mr. Huss speaks.

EXECUTIVE SESSION -

Rep. Kitselman moved HOUSE BILL 510 DO PASS. He moved proposed amendments be adopted, which motion was adopted unanimously. He reworded his first motion to HOUSE BILL 510 DO PASS AS AMENDED. This motion also carried unanimously.

Rep. Jensen moved HOUSE BILL 283 DO PASS. Motion was adopted unanimously.

Rep. Hal Harper moved HOUSE BILL 407 DO PASS - motion carried unanimously.

Rep. Meyer moved proposed amendments to HOUSE BILL 448 be adopted, and Rep. Metcalf proposed section 501 be removed from the title also. The proposed amendments were unanimously adopted. Rep. O'Hara moved HOUSE BILL 448 DO PASS AS AMENDED. Motion carried 18-1. Rep. Kitselman voted No.

Rep. Meyer moved HOUSE BILL 485 DO PASS. Rep. Metcalf moved proposed amendments be adopted, and they were unanimously adopted. Rep. Meyer reworded his motion to HOUSE BILL 485 DO PASS AS AMENDED, which motion carried unanimously.

Rep. Ellison moved HOUSE BILL 495 DO PASS. Rep. Harper moved an amendment to add MCA at the end of line 12 - amendment was adopted unanimously. Rep. Harper then moved HOUSE BILL 495 DO PASS AS AMENDED - motion carried 17-2 with Reps. Kitselman and Andreason voting No.

Rep. Jensen moved HOUSE BILLS 240, 241, 242, 243, 244 which he had sponsored, BE TABLED. Motion carried unanimously.

Meeting adjourned at 11:15 a.m.

REP. W. J. FABREGA, Chairman

Jo Lahti, Secretary

SENATOR REGAN: If you are going to do the job you should have done it in a reasonable manner.

Following this comment, there was loud discussion about the add-on rate and the discount rate.

SENATOR GOODOVER asked if there had been many abuses.

MR. ALKE: We have one man that specializes in supervising these agencies. We have found them to be very careful. It is the easiest industry to supervise that we have.

Then followed discussion about the refunds.

CHAIRMAN HAZELBAKER asked Mr. Alke to furnish the committee with a copy of rule 78 and he said that he would do so.

With no further discussion or questions the hearing closed on House Bill No. 321.

HOUSE BILL NO. 495: The bill was explained by Representative Toni Bergene, District 36, Great Falls. HB 495 removes the operation of the federal bankruptcy exemptions in Montana. The property allowed to be exempted in Montana would be the property exempt from executic of judgment. These are the exemptions that were allowed in Montana prior to the passage of the current law. This bill asks that the state bankruptcy be used rather than the federal. Because of the increase in bankruptcies sixteen other states have opted to not use the federal bankruptcy any longer. Most people don't file for a bankruptcy unless they have had a catastrophic situation.

JOHN ALKE representing the Montana Bankers Association spoke in support of the bill. I do a lot of work in this area. As has been mentioned there are a number of problems with bankruptcies right now. The enactment of the 78 code caused most of the problems. The is only one aspect of this that the state can deal with and that is House Bill 495. This bill would simply require a person to work within the state statutes. I want to go through a list with you and compare the federal and state exemptions.

		STATE	FEDERAL
1.	Homestead (expanded entitlement)	$20,000	$7,500
2.	Car [1]	$ 1,000	$1,200
3.	Necessary furniture	no limit	$ 200 per

		STATE	FEDERAL
4.	Life insurance	[3] No limit	Unmatured No limit Cash value $4,000
5.	45 days earnings [1]	No limit	See 12 below
6.	Clothes	No limit	See 3 above
7.	1 horse, 2 cows 4 hogs, 50 fowl, 3 months feed	See 3 above	See 3 above
8.	Clock & family pictures		See 3 above
9.	One gun	No limit	--------
10.	Tools of trade	No limit	$ 750
11.	Jewelry		$ 500
12.	Omnibus		$400 to $7,900
13.	Professionally prescribed health aids		No limit
14.	Social Security, Welfare, Disability benefits, pension plans, Alimony		No limit[5]
15.	Crime victim reparations, Wrongful Death Awards, Life Insurance proceeds, Personal injury awards		Reasonably necessary for support

FOOTNOTES:

1. One-half of these exemptions not exempt for debts incurred for necessities of life.

2. This exemption applies to household furnishings, goods, clothes, appliances, books, animals, crops, or musical instruments primarily for personal use.

3. This exemption applicable only if annual premiums less than $500 per year.

4. The unused portion of the federal homestead exemption may be added to the base of $400.00.

5. Alimony and pension plans are restricted. Both are limited to the amount reasonably necessary for support, and the type of pension plan qualifying is strictly limited by the statute.

All pension questions should be referred to 11 USC 522(d)(10)(E) for answers.

Almost every form of state or federal benefit program has some sort of anti-diversion provision. These provisions are intended to prohibit creditors from being the beneficiaries of governmental benefit programs, instead of the intended beneficiary. These provisions generally prohibit attachment or execution on the benefits.

It should be noted that a substantial body of case law has arisen around the concept that such anti-diversion statutes apply not only to the benefit checks, but also money or property traceable to such benefits. To a degree, the bankruptcy code probably incorporates this tracing concept. Additionally, the bankruptcy code specifically applies the tracing concept to crime reparation awards, personal injury awards, and wrongful death awards. Most governmental benefit programs probably have an anti-diversion provision, but this should be checked to make sure.

He went on to explain the Omnibus position. He mentioned the bill Representative Kemmis has introduced that deals with bankruptcy also.

JEFF KIRKLAND: I am the Director for the Governmental and Community Relations for the Montana Credit Unions League. The League is a trade association representing 133 of Montana's 136 credit unions, and we stand in support of House Bill 495. We see this bill as priority. He explained the joint filing and how a debtor could come out in a bankruptcy situation with increased assets by using the federal and state, one for each spouse.

GEORGE FLEMING: We are extremely concerned with the bankruptcy laws in the State of Montana. There are two districts, east and west. We tried to develop some figures but we found out the courts don't give figures except by number. He discussed the amount of losses and how the bill is needed very seriously.

CURTIS HANSEN, the Executive Vice-President of the Montana Retail Association stated his support of the bill. The ability to jump back and forth from state to federal should be eliminated. He gave examples of switching of schedules to benefit the person seeking bankruptcy.

In answer to a question, Mr. Fleming said he was representing the Credit Association of Caseade County. We hope to point out the losses figures and percentages caused in the eastern district of the Bankruptcy Court. The losses in the eastern district to September 15, 1980 were $19,000,000 and by the year end probably $25,000,000. The increase in both districts is 70%. We are tryir to change only the 522(d) section of the federal code. Fifteen states already have this type of bill.

NO OPPONENTS:

QUESTIONS FROM THE COMMITTEE:

SENATOR KOLSTAD: If you computed the maximum in each category, what kind of a net worth could you come up with. There was discussion about the amounts of federal and state.

MR. ALKE: You can compute the large items, and he went on to quot amounts that could be possible.

SENATOR GOODOVER asked about the program "60 Minutes" on bankruptcy If this will address an abuse then I am for this bill if it will do it.

SENATOR DOVER led a discussion about the dollar amounts, and what you can keep, such as an elaborate stereo-if you could keep somethi like that. Then followed discussion about life insurance and if it is exempt, and exactly what was meant by the "unmatured no limit cash value of $4,000".

SENATOR KOLSTAD: If this bill passes, then a person would not be subject to the federal, is this correct.

MR. ALKE: Yes, there is one general condition under the Montana exemption, such as a 1/2 exemption and the necessities of life. He gave examples.

Discussion about the law and which is more liberal, the state or the federal. Under the federal law it converts to cash value but under the state it is merely an exemption.

REPRESENTATIVE BERGENE closed. In reality, we should work to keep the state statutes and then work to clear them up. She discussed the bill introduced by Mr. Kemmis and what it would do, and what it has expanded. A debtor should consider several things before filing bankruptcy and the creditors need protection.

There was no further discussion and the hearing closed on House Bill No. 495.

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 13, 1981

Following the regular meeting the committee went into executive session to take action on bills pending. Chairman Hazelbaker listed the bills needing action.

HOUSE BILL NO. 238: Greg Petesch, attorney for the committee, explained the proposed amendments. There was discussion about the date of the expiration.

SENATOR GOODOVER moved the amendments. The motion carried with th vote unanimous.

HOUSE BILL NO. 239: The committee attorney, Greg Petesch explained the amendments. There followed discussion about the question of discrimination.

SENATOR LEE asked how this would affect a contract for deed.

MR. PETESCH stated it would have no effect.

SENATOR GOODOVER moved the amendments. The motion carried with the vote unanimous.

HOUSE BILL NO. 132: Senator Goodover moved to table. The motion carried with Senators Lee and Kolstad voting no. All others aye.

HOUSE BILL NO. 285: At the request of Senator Regan, Representative Fabrega explained again what the bill would do. He explained trust accounts and said that the purpose of a trust is to produce maximum income and maximum security. He explained the fiduciary and the co-fiduciary. This would allow the financial institutions to buy units and then provide the maximum security.

SENATOR LEE moved the bill be concurred in. The motion carried with the vote unanimous.

HOUSE BILL NO. 495: Senator Dover moved the bill be concurred in.

SENATOR REGAN asked why it wouldn't be wise to make the choice be one or the other.

REPRESENTATIVE FABREGA explained that if you are filing an individual bankruptcy then you must take one or the other, but if you file as a couple then you can each take one. Discussion followed.

SENATOR REGAN asked if a social security or a pension is safe under the state.

MR. PETESCH: It is.

MR. FABREGA: Those are exempt. This bill does not change anything

The motion passed that House Bill No. 495 be concurred in with the vote unanimous.

There was general discussion about the amendments as proposed for HOUSE BILL NO. 321. Credit reports were explained.

The meeting adjourned at 11:55 a.m.

Frank W. Hazelbaker, Chairman

Mary Ellen Connelly, Secretary

STANDING COMMITTEE REPORT

March 13, 19 81

MR. PRESIDENT:

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE Bill No. 495

Bergene (Senator Goodover)

Respectfully report as follows: That HOUSE Bill No. 495

BE CONCURRED IN

~~XXXXXX~~
~~DO PASS~~

Frank W. Hazelbaker

STATE PUB. CO.